

Evergreen Healthcare, Inc. d/b/a Willow Ridge Living Center and District 1199, Indiana/Iowa Union of Hospital & Healthcare Employees, SEIU, AFL-CIO. Case 25-CA-23106

July 31, 1995

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND
TRUESDALE

On June 15, 1994,¹ the National Labor Relations Board issued a Decision and Order in this proceeding² granting the General Counsel's Motion for Summary Judgment and finding that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to bargain with the Union and failing to furnish the Union with information that the Union had requested.

Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the Sixth Circuit, and the Board cross-applied for enforcement of its Order. On August 1, the Board filed a motion to postpone filing of the record so that the Board might reconsider its Decision and Order. On August 25, the Board filed a motion to dismiss the Respondent's petition for review so that the Board might reconsider its Decision and Order. On October 14, the Sixth Circuit granted the Board's motion to dismiss the petition and cross-petition, without prejudice, so that the Board might reconsider its Order. On December 30, the Board advised the parties that they might submit statements of position on reconsideration. The Respondent filed a statement of position.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On reconsideration, we reaffirm our prior Decision and Order finding that the Respondent violated Section

8(a)(5) and (1) by refusing to bargain and to furnish requested information to the certified Union. The Respondent defended its refusal to bargain, and its refusal to provide information, by contending, among other things, that the factual and legal basis on which the Board issued its certification was improper. We found that, with respect to the asserted impropriety of the Board's certification, that issue had been determined in the underlying representation proceeding³ and that it could not be relitigated in the unfair labor practice proceeding. We reaffirm that finding. With respect to the underlying representation case however, we rely solely on the reasons given in the hearing officer's report, which we previously adopted. We do not rely on the further reasoning of footnote 1 of the Board's Decision and Certification of Representative in Case 25-RC-8900.

ORDER

The National Labor Relations Board orders that the Order in Case 25-CA-23106 is reaffirmed.

MEMBER STEPHENS, concurring.

I concur with my colleagues in reaffirming the Board's prior decision in this case, but I continue to rely on the rationale set forth in footnote 1 in the Board's decision in the underlying representation case, in addition to the reasons set forth by the hearing officer in her report. To the extent that it was unclear in the Board's decision in the representation case whether the rationale set forth in footnote 1 constituted the sole rationale relied on by the Board, I join my colleagues in reconsidering our decision in this case to clarify that the Board in the representation decision adopted all of the reasoning of the hearing officer and additionally relied on the rationale set forth in footnote 1.

¹ All dates are in 1994.

² 314 NLRB No. 12 (1994) (not reported in Board volumes).

³ The Board's Decision and Certification of Representative in Case 25-RC-8900, issued February 17, is not reported in Board volumes.